Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

WYCKOFF, SEAMANS & BENEDICT,
Petitioner,

vs.

HOWE SCALE COMPANY OF 1886 and
FAY-SHOLES COMPANY,
Respondent.

Brief for Petitioner.

Statement of Case.

This is a petition for a writ of *certiorari*, requiring the Circuit Court of Appeals, for the second circuit, to certify the record and proceedings in the case of Wyckoff, Benedict & Seamans *vs.* Howe Scale Company of 1886 to this court, to the end that it may review and correct the errors complained of in the petition herein. The facts in this case are fully stated in a brief recently filed with this court, by the petitioner herein, in opposition to an application for a writ of *certiorari* by the respondent herein, and hence it is not deemed necessary to repeat here what is there set forth in detail.

The application of the respondent herein for a writ of *certiorari* was hitherto granted by this court.

Points.

I. On the hearing of this case on the petition of the Howe Scale Company of 1886 and the Fay-Sholes Company, this court will confine its consideration of the case and pass only on the errors assigned in said petition of the petitioner above named unless *certiorari* is granted on the petition herein.

Hubbard *vs.* Tod 171 U. S., 474.

II. The petitioner's application for a writ of *certiorari* herein should be granted, and, among others, for the following reasons:

1. There is a conflict of decision between the Circuit Court of the district of Vermont and the Circuit Court of Appeals of the second circuit in respect to the abbreviated or short name "Rem-Sho." Among other things, Judge Wheeler in his opinion said: "The long name Remington-Sholes got shortened into Rem-Sho in writing and speech in conducting the defendant's business, which was well understood to be an abbreviation of the full name. The defendant has put the abbreviation upon the machines in place of the full name; and claims that this, at least, is so different from the name Remington, as used by the plaintiff and its predecessors, that it can, and does, not amount to any representation that the machines are Remington machines. If this short name had been the one first used there would be much plausibility in this argument; but, following Remington-Sholes as it has in use, it has become a well-known short representation of what the long name it stands for represented, and of itself now amounts to a wrongful representation of the source of the defendant's machines."

In the decree entered by the Circuit Court the abbreviation "Rem" was suppressed. The Circuit Court of Appeals, speaking through Judge Lacombe, said: "The arbitrary name 'Rem-Sho,' however,

does not seem to us to be sufficiently like 'Remington' to be by itself a reasonable cause of confusion. The decree, therefore, is reversed, without costs, and cause remanded, with instructions to decree in favor of complainant only as to the name 'Remington."

2. Suit is now pending in the United States Circuit Court for the northern district of Illinois, wherein the petitioner, Wyckoff, Seamans & Benedict, is complainant, and the Remington-Sholes Company is defendant. This action was brought to restrain the use by defendant of the name "Remington" and abbreviation "Rem" upon typewriting machines and in connection with the sale thereof. Under the stipulation of the parties to that suit, and the order of the Illinois Court based thereon, the Remington-Sholes Company is concluded and bound by the decision and decree of the Circuit Court of Appeals of the second circuit in respect to the use of the name Remington upon typewriting machines, but its right to use the abbreviated name "Rem-Sho" is still an open question in the Illinois case.

It is, therefore, submitted that a full consideration of this case by this honorable Court will tend to prevent costly and undesirable litigation and settle all questions in controversy between the parties to this action.

3. This Court has already granted respondents motion for a writ of *certiorari*, and the whole record and proceedings of the courts below will be before it at the hearing of this case, and little, if any, additional labor will be imposed upon this Court if it shall grant this application, hear the whole case and thereby promote justice to all interested therein.

4. The Circuit Court of Appeals for the second circuit erred in holding that the short name "Rem-

Sho" was not sufficiently like "Remington" to be likely to cause confusion, for the reason, among others, that the abbreviated or short name "Rem-Sho" had theretofore always been used in connection with "Remington-Sholes," and to use the abbreviation "Rem-Sho" is to all intents and purposes to use the long name "Remington-Sholes."

5. The proofs in the record fully sustain the opinion of the Circuit Court wherein it is said that "the long name 'Remington-Sholes' got shortened into 'Rem-Sho' in writing and speech in conducting the defendant's business, which was well understood to be an abbreviation of the full name."

6. The proofs also fully establish the fact that the short or abbreviated name "Rem-Sho" followed the use of the name "Remington-Sholes," and the latter name was always used on the machines, in all advertising *media*, and upon signs and orally as a designation for respondent's typewriting machines.

For the foregoing reasons it is respectfully submitted that the petition of Wyckoff, Seamans & Benedict for a writ of *certiorari* should be granted to the end that the whole controversy pending between the parties to this action may be fully considered and determined by this Court.

EDMUND WETMORE,
HENRY D. DONNELLY,
of Counsel for Petitioner.